

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-217354

DATE: May 5, 1986

MATTER OF: Dan Barclay, Inc.

DIGEST: The Navy instructed a motor carrier, which arrived in Virginia for pick up of a ship's propeller on a Friday, to provide special military service in the transportation of the shipment to California. Since the service included performance of continuous line-haul transportation to meet a delivery deadline, the carrier should be allowed a special hourly rate for the hours between 5 p.m. Monday and 7 a.m. Tuesday, because these were unusual hours within the meaning of the carrier's tariff; however, the carrier is not entitled to the special hourly rate for unusual hours prior to the commencement of transportation on Friday where the delay in the commencement of transportation was caused by the carrier's obtaining special permits which was its responsibility.

Dan Barclay, Inc., asks the Comptroller General to review settlement action taken by the General Services Administration (GSA) relating to the transportation of a ship's propeller from Virginia to California on a Government bill of lading.^{1/} We conclude that Barclay is entitled to \$723.80 of the \$1,137.40 claimed and that the carrier is entitled to retain an additional \$387.75 that GSA contends was allowed in error.^{2/}

1/ A previous review of GSA action relating to the Government's use of Barclay's employee and equipment for transportation of the propeller by military aircraft from Travis Air Force Base to the Philippines and return resulted in decision, Dan Barclay, Inc., B-217354, June 11, 1985, 64 Comp. Gen. _____.

2/ GSA also disallowed Barclay's claim of \$2,177.16 for "expedited service." Although the carrier has not pursued the matter here we have considered the merits and agree with GSA that the expedited service charges were not applicable since the special military service charges were allowed.

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Facts

The carrier, Dan Barclay, Incorporated, claims that at 6 a.m. on Friday, September 23, 1983, its team of two drivers departed for the Naval Supply Center, Williamsburg, Virginia, in a tractor pulling a semi-trailer specially equipped to transport ships' propellers, a commodity which, because of unusual dimensions, presents complications in providing safe highway transportation and a need for the carrier to obtain permits from states through which transportation is to be performed. The vehicle arrived at the Naval Supply Center at 7:43 a.m., where the carrier accepted a four-bladed ship's propeller, weighing 39,000 pounds, for transportation to Travis Air Force Base, California, under the terms and conditions of Government Bill of Lading No. S-5540187, dated September 22, 1983. The Navy issued instructions through the Military Traffic Management Command, Bayonne, New Jersey, for the carrier to operate in continuous line-haul service through the weekend to meet a specific delivery date at Travis. After installing night running lights and waiting for highway permits and escorts, according to a Navy report the vehicle departed the Naval Supply Center at 11:29 p.m. laden with the propeller destined ultimately to Subic Bay, Philippines. Apparently, after continuous movement, the shipment arrived at Travis on Tuesday, September 27 at 3 p.m.

For the services the carrier billed and collected total charges of \$28,082.93, which included basic freight charges of \$5,374.20, charges for "special military service" of \$7,605.66, "expedited service" charges of \$2,177.16, plus escort and permit charges, among others. After various actions by GSA, including deduction action and changes in its audit position, the issue has been narrowed to a dispute over the number of hours for which the \$51.70 hourly charge for special military service was applicable.

GSA allowed the carrier charges for 55-1/2 hours, but it now believes it should recover for 7-1/2 hours that were erroneously allowed. These included the hours between 11:29 p.m. to midnight, Friday, September 23 and from midnight to 7 a.m., Monday, September 26. GSA asserts that since these hours were not on Saturday or Sunday, they were not covered under the applicable tariff provision. Barclay

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contends that it is entitled to charges for 77-1/2 hours, that is, an additional 22 hours, including 1 hour between 6 a.m. and 7 a.m. plus the hours from 5 p.m. to midnight, Friday, September 23, and from 5 p.m. Monday to 7 a.m. Tuesday, September 27.

Discussion

The applicable rate provisions are published in Heavy & Specialized Carriers Tariff Bureau Tariff 401-A. There are three relevant provisions. Item 1775 contains the \$51.70 hourly rate for terminal or special service. Item 1740 contains the terms and conditions for special service and refers to item 1775 for application of the hourly charge for such service. Finally, item 1590 pertains to weekend, holiday and overtime charges.

To the extent pertinent, items 1590 and 1740 follow:

"Item 1590 HOLIDAY, SATURDAY, SUNDAY, AND OVERTIME

"The carrier will not operate on Saturdays, Sundays, the following holidays or days observed as such:

* * * *

"Nor between the hours of 5:00 P.M. and 7:00 A.M., unless specifically requested to do so by the consignor, consignee, or owner of the goods.

* * * *

"When shipments are being transported under special permits and the Saturday, Sunday or holidays, occur while the shipment is enroute from origin to destination, the carrier will assess charges provided in Items 1535, 1550 and 1775 for Saturday and Sunday, or the holiday. Time will be computed for Saturday and Sunday, or the holiday, in all cases where drivers, escorts and/or helpers do not return to home terminal for weekends and holidays, and will be subject to a minimum of ten

hours per day, per man, and ten hours per day, per vehicle, without regard to on duty time."

Item 1740 "SPECIAL MILITARY SERVICE * * *

"DEFINITION - Special military service is a service which provides a more expeditious handling and delivery of government freight than is available under tariffs or to the public generally, and guarantees the separation and segregation of freight for the protection against damage, scrutiny, and/or pilferage.

"TERMS AND CONDITIONS - To meet military requirements when and as directed by the shipping officer, carriers will furnish one or more of the following special services and subject to the specified conditions in performing the special military service as defined in the preceding paragraph:

"(a) Shipments will be picked up at an hour specified and will be given special expedited service in an attempt to meet a specified delivery date and time.

"(b) Direct routes will be used to the maximum practicable extent, and no calls or stops will be made at the premises of the carrier or any other shipper or receiver for loading or unloading of freight, provided that any special circuitous routes to avoid congested areas or conditions adverse to safety or military security will be followed as instructed by the shipper officer; and provided that any special routes designated by State special permits, or any routes necessary to complete an interchange will be used.

"(c) When required, shipments will be picked up and through transportation commenced at hours which are unusual and normally considered unreasonable. Charges for this service shall be shown in item 1775.

"(d) Vehicles will be operated in continuous line-haul service limited by safety rules and hours of service maxima as prescribed by law, the Interstate Commerce Commission, or other authority having pertinent jurisdiction."

Item 1740 also provides that charges for special military service shall be 20 percent of the basic freight rate "in addition to all other charges."

The parties agree that Barclay was entitled to the hourly rate of \$51.70 for the 48 hours of Saturday and Sunday. GSA's disallowance of the additional 22 hours on Friday, Monday, and Tuesday, and the request to recover for the 7-1/2 hours allowed for Friday and Monday, was based on two premises. The first premise is that the Government authorized service during unusual hours only on Saturday and Sunday, but not for any overtime hours on other days between 5 p.m. and 7 a.m. The second premise is that item 1590, while providing the extra charge for Saturdays, Sundays and holidays, does not specifically provide such charge for overtime hours.

As to the first premise, there is no question that in addition to requiring the carrier to commence transportation at an unusual hour, the Government requested and expected Barclay to provide expeditious and continuous line-haul operations to meet the Navy's specified delivery date. The shipment was in continuous transportation from 11:29 p.m. on Friday until 3 p.m. on Tuesday. Thus, the practical result of the Government's requirements was to necessitate Barclay's operating during overtime hours.

As to the second premise, we regard GSA's interpretation of item 1590, concerning holidays, Saturdays, Sundays, and overtime, as unduly narrow. GSA interprets the fifth paragraph, beginning with "When shipments are being transported under special permits," to exclude payment for overtime hours. Although the paragraph does not specifically mention overtime, the caption and first paragraph of the item clearly show that it covers hours of operation between 5 p.m. and 7 a.m. as well as Saturdays, Sundays, and holidays. In addition, paragraph (c) of item 1740 specifically provides that shipments rendered special military service, when required, will be picked up and through transportation commenced at hours which are unusual and normally considered unreasonable with charges for such service as shown in item 1775. Since item 1590 states that the carrier will not operate between the hours of 5 p.m. and 7 a.m. unless specifically requested to do so, those hours appear to be among the hours deemed unusual and normally unreasonable referred to in item 1740. Since this shipment was required to be "en route" under a special permit in continuous transportation during overtime hours, the carrier is entitled to the \$51.70 hourly rate for such hours. This includes the period from 11:29 p.m. to midnight, Friday, September 23; from midnight to 7 a.m., Monday, the 26th; and from 5 p.m., Monday, to 7 a.m., Tuesday, the 27th.

For the following reasons, however, the carrier is not entitled to the hourly charge for the additional 7-1/2 hours claimed for Friday. The vehicle apparently left its terminal at 6 a.m. and arrived at origin at 7:43 a.m., Friday. Then, after loading and apparently awaiting escorts and permits, it departed at 11:29 p.m. The carrier claims an additional 7-1/2 hours overtime for the periods from 6 a.m. to 7 a.m. and 5 p.m. to 11:29 p.m. Clearly, the shipment was not picked up and through transportation begun by 7 a.m. Also, while arguably it could be concluded that the shipment was "picked up" by 5:01 p.m. that afternoon and thus was entitled to an hourly charge from that time until 11:29 p.m., the shipment was awaiting permits and escorts during that time. We have held that obtaining necessary permits for overdimensional loads is the responsibility of the carrier. See Ultra Special Express, 54 Comp. Gen. 308 (1974). Since the record justifies the presumption that the time between 5 p.m. and 11:29 p.m. represents a delay in departure caused by the carrier, it cannot be viewed as time in which the carrier was performing special military services.

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Accordingly, the carrier is entitled to \$723.80 for the 14 hours from 5 p.m. Monday the 26th to 7 a.m., Tuesday, the 27th, based on the hourly rate of \$51.70. It is also entitled to retain the \$387.80 it was allowed for the 7-1/2 disputed hours consisting of 1/2 hour on Friday, the 23rd, and 7 hours on Monday, the 26th. But, it is not entitled to payment for the 7-1/2 hours from 6 a.m. to 7 a.m., and from 5 p.m. to 11:29 p.m. on Friday.



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